

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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JUL 14 1992

Federal Communications Commission
Office of the Secretary

In the Matter of)
)
Amendment of Parts 1, 2, and)
21 of the Commission's Rules)
Governing Use of the Frequencies)
in the 2.1 and 2.5 Ghz Bands)

PR Docket No. 92-80
RM 7909

ORIGINAL
FILE

REPLY COMMENTS OF CROSS COUNTRY

Cross Country Telecommunications, Inc. ("Cross Country") hereby submits these reply comments in the above-captioned proceeding. Cross Country commends the Commission for issuing the Notice of Proposed Rulemaking, FCC 92-173 ("Notice"), to address the processing delays that have inhibited the full development of wireless cable, and endorses several of the remedies proposed in the Notice as well as the remedies recommended by the Wireless Cable Association International, Inc. ("WCA") and the Federal Communications Bar Association ("FCBA") in their comments. Cross Country, however, opposes the Notice's proposed revisions of the current interference protection rules. These revisions, if adopted, would severely undermine the development and operation of wireless cable systems across the country.

As one of the preeminent wireless cable systems in the country, Cross Country has a strong interest in this proceeding. In addition to holding MDS licenses in various communities, Cross Country operates a highly successful and rapidly growing wireless cable operation located in Riverside, California. In Riverside, through licenses held in its own

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name and lease arrangements with eight different ITFS and MDS licensees, Cross Country has assembled a 27 channel wireless cable system serving an area encompassing more than 600,000 homes. Even though this system has been operating just over a year, and without the full complement of wireless cable channels, Cross Country nonetheless is now providing service to approximately 30,000 subscribers. In addition, the five educational institutions leasing ITFS channel capacity to Cross Country have benefitted greatly under their agreements with Cross Country. They are receiving substantial monthly lease payments, which are allowing them to develop fully their distance learning capabilities, and Cross Country has constructed on their behalf state-of-the-art ITFS facilities. Cross Country expects the success of its Riverside operations to continue to grow as it adds additional channels to its system and more viewers discover this less expensive, more service-oriented alternative to coaxial cable.

In the long, arduous process of putting together this system, Cross Country experienced first-hand the processing delays and regulatory hurdles described in the Notice. Despite the efforts of a dedicated, hardworking FCC staff, these delays and hurdles have greatly added to the cost of developing Cross Country's wireless cable system. In other cases, the complex and unwieldy regulatory structure governing the wireless cable industry has not just increased the initial required investment, it has frustrated development altogether.

The culprit has been a deluge of applications, the great majority of which were filed by speculators and application mills interested only in a speculative resale pay-off. No matter how hardworking and dedicated, the Domestic Radio Branch simply has not been staffed to handle such an onslaught under the Commission's current processing procedures. The Notice proposes several possible measures to eliminate the current backlog and to expedite processing in the future.

I. REVISING CURRENT INTERFERENCE PROTECTION RULES
WILL NOT FURTHER THE COMMISSION'S GOAL OF
FOSTERING THE DEVELOPMENT OF WIRELESS CABLE

The Notice proposes several revisions to its current interference protection standards which, while on their face are administratively expedient, would greatly inhibit the development of wireless cable. These putative cures are surely worse than the disease, and may even kill the patient.

The commenters were resoundingly opposed to the proposal in the Notice that mileage separation standards be used instead of the current interference protection criteria under which MDS applicants are required to submit analyses of the potential for harmful interference to co- and adjacent-channel stations.^{1/} Notice at ¶ 12. Under the proposed standard, applicants would be required to certify that their

^{1/} See, e.g., WCA Comments at 46-56; Comments of FCBA at 3-6; Comments of Coalition for Wireless Cable at 5-10; Comments of Concerned Wireless Cable Operators at 10-16; Comments of Fletcher, Heald & Hildreth at 16-22; Comments of Hardin and Associates, Inc. at ¶ 3; Comments of Wireless Cable, Inc. at 7-10.

proposed facilities would be located at least 80 km from any existing or previously applied-for co-channel station, and at least 48 km from any existing and previously applied-for adjacent-channel station. Id. Alternatively, the Commission has proposed the use of a short-spacing table. Id. at ¶ 14.

The commenters correctly pointed out that such a scheme is unrealistic given the flexibility wireless cable operators need to design viable systems. Separation requirements would have prevented Cross Country from creating its 27 channel wireless cable system in Riverside. Numerous existing and previously-applied for ITFS and MDS stations are spread throughout the Riverside/San Bernardino area, many of them within 80 and even 48 km from Cross Country's transmitter site at Box Springs Mountain. Through careful engineering and close coordination with other licensees, Cross Country has so far been able to design a system with an adequate number of colocated channels without causing objectionable interference to co- and adjacent-channels. This simply could not have been possible under either the Commission's proposed of separation standards or short-spacing table. If either of these proposals is adopted now, it could seriously disrupt Cross Country's current efforts to add desperately needed additional channels to its system.

Cross Country also opposes the Notice's proposal to modify the existing procedures for protecting ITFS stations from interference. Under the present rules, MDS applicants

will not be granted a license unless they demonstrate, based on theoretical calculations, that their proposed facilities will not cause harmful interference to co- and adjacent-channel ITFS stations within 50 miles. Instead of this pre-licensing review of the potential for interference, the Notice proposes not only to impose separation standards on MDS applicants with respect to ITFS stations, but also to condition an MDS license, once it is granted, on complying with interference protection criteria "in actual practice". Under this scheme, an ITFS licensee would have 30 days after the MDS licensee initiates operations to lodge interference complaints, in which case the Commission "could require the MDS operator to cease operating immediately without a hearing." Notice at ¶ 15, n.29.

As detailed by the commenters, this proposal is also unrealistic and unnecessary. The uncertainty that would be created would make it much more difficult, if not impossible, for wireless cable operators to secure the financing necessary to develop their systems. WCA Comments at 56-57; Comments of Consortium of Concerned Wireless Cable Operators at 17. It also fails to take into account the fact that interference can result from out-dated, inferior receive antennas used by some ITFS licensees; imposing on wireless cable operators the burden of preventing interference in these circumstances is unduly burdensome and inequitable. WCA Comments at 57. The Notice's draconian proposal will also give extra ammunition to

greenmailers who, as past experience has shown, at times have used unsuspecting ITFS licensees to file strike applications. See id.; Comments of Coalition for Wireless Cable at 17, n.12; Comments of Fletcher, Heald & Hildreth at 9-11.^{2/}

II. TAKING STEPS TO DETER SPECULATIVE APPLICATIONS AND STREAMLINE CURRENT PROCESSING PROCEDURES WILL ELIMINATE THE CURRENT BACKLOG OF APPLICATIONS AND ENSURE TIMELY PROCESSING IN THE FUTURE

Not only are the proposals to revise the current interference protection rules unwise, they are unnecessary. As noted above, supra, page 2-3, the inordinate delays in processing have in large part been caused by an avalanche of speculative filings. By adopting rules to discourage such filings and by making several adjustments to current processing procedures, the Commission can eliminate undue delays.

A. Deterring Speculative Applications

Cross Country agrees with WCA and other commenters that processing delays can be eliminated to a large extent by the adoption of rules to discourage speculative filings, including banning settlement groups among filers of mutually-exclusive applications. Notice at ¶¶ 17, 21. Such a ban was proposed by petition for rulemaking filed by WCA, and has

^{2/} The proposal in the Notice to impose an HAAT limitation on MDS transmitting antennas is also misguided. Such a limitation would unduly restrict wireless operators in engineering their line-of-site systems. See WCA Comments at 59-64.

received strong support from commenters in this proceeding.^{3/} As demonstrated in WCA's petition and as explained in the Notice, barring both full and partial settlement agreements would curtail the number of speculative applications by "restricting lottery entry to entities with a sincere interest in using MDS frequencies for their intended purposes." Id. at ¶ 17. Cross Country also urges the Commission to adopt WCA's recommendation that the Commission's rules be amended to ban expressly any person from holding any interest in more than one mutually-exclusive application. WCA Comments at 31-33.

WCA and other commenters point to another measure that would deter speculative filings and safeguard the full development of wireless cable systems: redefining the current definition of protected service area in Section 21.902(d).^{4/} This definition has been rendered obsolete by the increased transmitting power wireless cable operators are now using and advances in receiver technology. Cross Country's Riverside operations transmit omnidirectional signal patterns, which under current rules provide it with a 15 mile protected service area. This simply does not reflect reality given that more than 20% of Cross Country's subscribers are located

^{3/} See Petition of WCA for Rulemaking, RM-7909 (December 12, 1991); Comments of Wireless Cable, Inc. at 11-12; Comments of Fletcher, Heald & Hildreth at 23-25; Comments of Hardin and Associates, Inc. at ¶ 6; Comments of MWTv, Inc. at 7-8; Comments of Universal Wireless Television Corp. at 7; Comments of Monterey County Wireless Cable, Inc. at 8.

^{4/} See WCA Comments at 35-43; Comments of Consortium of Concerned Wireless Cable Operators at 21-24.

beyond this area. A substantial number of Cross Country's subscribers are thus vulnerable to interference caused by newly authorized stations outside of the 15 mile radius, which, needless to say, provides fertile ground for greenmailing. WCA's straightforward formula for defining a station's protected service area according to its EIRP along each radial is much more representative of actual service areas, and should be adopted by the Commission. See WCA Petition for Partial Reconsideration, Gen. Docket No. 90-54 (filed December 13, 1991); WCA Comments at 39-43.

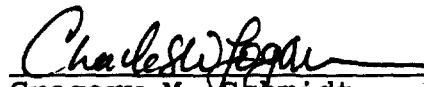
B. Streamlining Processing Procedures

The processing of the backlog of applications and future applications can be greatly expedited if several procedural adjustments proposed by the Commission and the commenters are implemented. Such adjustments include the establishment of a complete and current database to facilitate the processing of applications. This task can probably best be performed by the Private Radio Bureau, which should be assigned responsibility for the initial processing of applications so that they can be placed on public notice quickly and the database updated on a regular basis. The Commission should also consolidate both ITFS and MDS applications in either the Common Carrier Bureau or the Mass Media Bureau. Consolidation in one bureau would avoid the duplication of staff effort and inefficiencies of the present system.

Cross Country believes these steps, as well as others recommended by WCA and the FCBA in their comments, will allow the Commission to eliminate the current backlog of applications that have been pending for years. They should ensure, along with the adoption of appropriate rules to discourage speculative applications, that MDS applications will be processed on a timely basis in the future.

Respectfully submitted,

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Date: July 14, 1992